

ORIGINAL

CC: LEK

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

OCT 22 2018

at 12 o'clock and 30 min. P.M.
SUE BEITIA, CLERK

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lms

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

CV18 00403 LEK KSC
Case No:

Peter Strojnik,

Plaintiff,

vs.

Green Tea. LLC dba Travaasa Experiential
Resorts

Defendant.

VERIFIED COMPLAINT

1. Americans with Disabilities Act
2. Discrimination in Public Accommodations (State Law)
3. Negligence

JURY TRIAL REQUESTED

1. Plaintiff brings this action pursuant to the (1) Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.* and corresponding regulations, 28 CFR Part 36 and Department of Justice Standards for Accessible Design ("ADA"), (2) Chapter 489 of the Hawai'i revised statutes, Chapter 489, Discrimination in Public Accommodations §§489-1 *et seq.* ("HRS") and (3) common law of negligence per se.

PARTIES

2. Plaintiff Peter Strojnik is a veteran and a disabled person as defined by the ADA and Chapter 489 of HRS.
3. Plaintiff is a single man currently residing in Maricopa County, Arizona. Plaintiff is and, at all times relevant hereto has been, legally disabled by virtue of a severe right-sided neural foraminal stenosis with symptoms of femoral neuropathy, prostate cancer

Copy sent on: 10/22/2018
Date
Notes: fsc Complaint, Civ. sheet,
summons, rules 16 + waiver.

lms

1 and renal cancer, degenerative right knee and is therefore a member of a protected
2 class under the ADA and HRS's Chapter 489.

3 4. Plaintiff suffers from physical impairments described above which impairments
4 substantially limit his major life activities. Plaintiff walks with difficulty and pain
5 and requires compliant mobility accessible features at places of public
6 accommodation. Plaintiff's impairment is constant, but the degree of pain is episodic
7 ranging from dull and numbing pain to extreme and excruciating agony.

8 5. Defendant, owns, operates leases or leases to a lodging business ("Hotel") located at
9 5031 Hana Hwy, Hana, HI 96713 which is a public accommodation pursuant to 42
10 U.S.C. § 12181(7)(A) and HRS § 489-2. which offers public lodging services *See* 28
11 CFR §36.104 and a listing of public accommodations in 42 U.S.C. §12181(7).

12 JURISDICTION

13 6. District Court has jurisdiction over this case or controversy by virtue of 28 U.S.C. §§
14 28-1331 and 42 U.S.C. § 12188 and 28 U.S.C. § 1367.

15 7. Plaintiff brings this action as a private attorney general who has been personally
16 subjected to discrimination on the basis of his disability, *see* 42 U.S.C.12188 and 28
17 CFR §36.501.

18 8. This Court has continuing subject matter jurisdiction by virtue of, *inter alia*,
19 Plaintiff's claim for equitable nominal damages.

20 9. Venue is proper pursuant to 28 U.S.C. § 1391.

21 10. The ADAAG violations in this Verified Complaint relate to barriers to Plaintiffs
22 mobility. This impairs Plaintiff's full and equal access to the Hotel which, in turn,
23 constitutes discrimination satisfying the "injury in fact" requirement of Article III of
24 the United States Constitution.

25 11. Plaintiff is deterred from visiting the Hotel based on Plaintiff's knowledge that the
26 Hotel is not ADA or HRS compliant as such compliance relates to Plaintiff's
27 disability.

28 12. Plaintiff intends to visit Defendant's Hotel at a specific time when the Defendant's
noncompliant Hotel becomes fully compliant with ADAAG; just as a disabled
individual who intends to return to a noncompliant facility suffers an imminent injury

1 from the facility's existing or imminently threatened noncompliance with the ADA, a
2 plaintiff who is deterred from patronizing a store suffers the ongoing actual injury of
3 lack of access to the Hotel.

4 COUNT ONE

5 Violation of Plaintiff's Civil Rights under the ADA

6 13. Plaintiff realleges all allegations heretofore set forth.

7 14. By virtue of his disability, Plaintiff requires an ADA compliant lodging facility
8 particularly applicable to his mobility, both ambulatory and wheelchair assisted.

9 15. Plaintiff intended to vacation in Hawai'i and therefore, reviewed vacation booking
10 websites as documented in Addendum A.

11 16. Air booking websites took Plaintiff to third party hotel booking websites as
12 documented in Addendum A.

13 17. Plaintiff became aware that third party booking websites disclosed general availability
14 and description of Defendant's Hotel. Third Party booking websites referenced here
15 are more fully documented in Addendum A which is by this reference incorporated
16 herein.

17 18. Third party booking websites failed to identify and describe mobility related
18 accessibility features and guest rooms offered through its reservations service in
19 enough detail to reasonably permit Plaintiff to assess independently whether
20 Defendant's Hotel meets his accessibility needs as more fully documented in
21 Addendum A.

22 19. Third party booking websites also failed to make reservations for accessible guest
23 rooms available in the same manner as individuals who do not need accessible rooms.
24 *See Addendum A.*

25 20. Thereafter, Plaintiff became aware that Defendant's 1st party booking website failed
26 to identify and describe mobility related accessibility features and guest rooms offered
27 through its reservations service in enough detail to reasonably permit Plaintiff to
28 assess independently whether Defendant's Hotel meets his accessibility needs as more
fully documented. *See Addendum A.*

1 21. Plaintiff also became aware that Defendant's 1st party booking website failed to make
2 reservations for accessible guest rooms available in the same manner as individuals
3 who do not need accessible rooms. *See* Addendum A.

4 22. Because third and first party booking agents failed to identify and describe mobility
5 related accessibility features and guest rooms offered through its reservations service
6 in enough detail to reasonably permit Plaintiff to assess independently whether
7 Defendant's Hotel meets his accessibility needs Plaintiff declined to book a room
8 there and because Plaintiff was unable to make reservations for accessible guest
9 rooms available in the same manner as individuals who do not need accessible rooms,
10 Plaintiff declined to book a room there.

11 23. Plaintiff thereafter reviewed Defendant's online information relating to accessibility
12 or lack thereof, including in particular photographs of the amenities at the Hotel all as
13 more fully documented in Addendum A.

14 24. Online information relating to accessibility or lack thereof disclosed Defendant's non-
15 compliance with architectural barriers to accessibility as more fully documented in
16 Addendum A.

17 25. Defendant has violated the ADA by denying Plaintiff equal access to its public
18 accommodation on the basis of his disability as outlined above and as outlined in
19 Addendum A.

20 26. The ADA violations described in Addendum A relate to Plaintiff's disability and
21 interfere with Plaintiff's full and complete enjoyment of the Hotel.

22 27. As a result of the deficiencies described above, Plaintiff declined to book a room at
23 Defendant's Hotel and did not travel to Hawai'i to vacation there.

24 28. The removal of accessibility barriers listed above is readily achievable.

25 29. As a direct and proximate result of ADA Violations, Defendant's failure to remove
26 accessibility barriers prevented Plaintiff from equal access to the Defendant's public
27 accommodation.

28 **WHEREFORE**, Plaintiff prays for all relief as follows:

A. Relief described in 42 U.S.C. §2000a – 3; and

B. Relief described in 42 U.S.C. § 12188(a) and (b) and, particularly -

- C. Injunctive relief order to alter Defendant's place of public accommodation to make it readily accessible to and usable by ALL individuals with disabilities; and
- D. Requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by Subchapter III of the ADA; and
- E. Equitable nominal damages; and
- F. For costs, expenses and attorney's fees; and
- G. All remedies provided for in 28 C.F.R. 36.501(a) and (b).

COUNT TWO

(Violation of the Hawai'i's Chapter 489, Part I)

30. Plaintiff realleges all allegations heretofore set forth.

31. Defendant has violated Hawai'i's Chapter 489 Part I by denying Plaintiff equal access to its public accommodation on the basis of his disability as outlined above and in Addendum A.

32. Plaintiff has been injured by the unlawful discriminatory practices alleged in this Complaint.

33. Pursuant to HRS §489-7.5, Plaintiff is entitled to -

- a. sue for damages sustained, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys' fees together with the costs of suit, and
- b. bring proceedings to enjoin the unlawful discriminatory practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorneys' fees together with the cost of suit.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. A Declaratory Judgment that at the commencement of this action Defendant was in violation of the specific requirements of Statutes; and

- c. A permanent injunction which directs Defendant to take all steps necessary to bring its Hotel into full compliance with the requirements set forth in HRS, and its implementing regulations, so that the facilities are fully accessible to, and independently usable by, disabled individuals as required by law, and which further directs that the Court shall retain jurisdiction for a period to be determined after Defendant certifies that its facilities are fully in compliance with the relevant requirements of the Statutes to ensure that Defendant has adopted and is following an institutional policy that will in fact cause Defendant to remain fully in compliance with the law; and
- d. The payment of costs of suit; and
- e. Order closure of the Defendant's Hotel until Defendant has fully complied with the ADA and HRS; and
- f. For damages in an amount no less than \$1,000.00 per violation per encounter; and
- g. For treble damages pursuant to HRS §489-7.5(c).
- h. The provision of whatever other relief the Court deems just, equitable and appropriate.

COUNT THREE

Negligence

34. Plaintiff realleges all allegations heretofore set forth.

35. Defendant had a duty to Plaintiff to remove ADA accessibility barriers so that Plaintiff as a disabled individual would have full and equal access to the public accommodation.

36. Defendant breached this duty.

37. Defendant is or should be aware that, historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem¹.

¹ 42 U.S.C. § 12101(a)(2)

1 38. Defendant knowingly and intentionally participated in this historical discrimination
2 against Plaintiff, causing Plaintiff damage.

3 39. Discrimination against individuals with disabilities persists in the use and enjoyment
4 of critical public accommodations².

5 40. Defendant's knowing and intentional persistence in discrimination against Plaintiff is
6 alleged, causing Plaintiff damage.

7 41. Individuals with disabilities, including Plaintiff, continually encounter various forms
8 of discrimination, including outright intentional exclusion, the discriminatory effects
9 of architectural, overprotective rules and policies, failure to make modifications to
10 existing facilities and practices, exclusionary qualification standards and criteria,
11 segregation, and relegation to lesser services, programs, activities, benefits, jobs, or
12 other opportunities³.

13 42. Defendant's knowing and intentional discrimination against Plaintiff reinforces above
14 forms of discrimination, causing Plaintiff damage.

15 43. Census data, national polls, and other studies have documented that people with
16 disabilities, as a group, occupy an inferior status in our society, and are severely
17 disadvantaged socially, vocationally, economically, and educationally⁴.

18 44. Defendant's knowing and intentional discrimination has relegated Plaintiff to an
19 inferior status in society, causing Plaintiff damage.

20 45. The Nation's proper goals regarding individuals with disabilities are to assure equality
21 of opportunity, full participation, independent living, and economic self-sufficiency
22 for such individuals⁵.

23 46. Defendant's knowing, and intentional discrimination has worked counter to our
24 Nation's goals of equality, causing Plaintiff damage.

25 47. Continued existence of unfair and unnecessary discrimination and prejudice denies
26 people with disabilities the opportunity to compete on an equal basis and to pursue
those opportunities for which our free society is justifiably famous, and costs the

27 ² 42 U.S.C. §12101(a)(3)

28 ³ 42 U.S.C. §12101(a)(5)

⁴ 42 U.S.C. §12101(a)(6)

⁵ 42 U.S.C. §12101(a)(7)

1 United States billions of dollars in unnecessary expenses resulting from dependency
2 and nonproductivity⁶.

3 48. Defendant's knowing and intentional unfair and unnecessary discrimination against
4 Plaintiff demonstrates Defendant's knowing and intentional damage to Plaintiff.

5 49. Defendant's breach of duty caused Plaintiff damages including, without limitation,
6 the feeling of segregation, discrimination, relegation to second class citizen status the
7 pain, suffering and emotional damages inherent to discrimination and segregation and
8 other damages to be proven at trial.

9 50. By violating Plaintiff's civil rights, Defendant engaged in intentional, aggravated and
outrageous conduct.

10 51. The ADA has been the law of the land since 1991, but Defendant engaged in a
11 conscious action of a reprehensible character, that is, Defendant denied Plaintiff his
12 civil rights, and cause him damage by virtue of segregation, discrimination, relegation
13 to second class citizen status the pain, suffering and emotional damages inherent to
14 discrimination and segregation and other damages to be proven at trial

15 52. Defendant either intended to cause injury to Plaintiff or defendant consciously
16 pursued a course of conduct knowing that it created a substantial risk of significant
17 harm to Plaintiff.

18 53. Defendant is liable to Plaintiff for punitive damages in an amount to be proven at trial
19 sufficient, however, to deter this Defendant and others similarly situated from
20 pursuing similar acts.

21 **WHEREFORE**, Plaintiff prays for relief as follows:

- 22 A. For finding of negligence; and
23 B. For damages in an amount to be proven at trial; and
24 C. For punitive damages to be proven at trial; and
25 D. For such other and further relief as the Court may deem just and proper.

26 **REQUEST FOR TRIAL BY JURY**

27 Plaintiff respectfully requests a trial by jury in issues triable by a jury.
28


⁶ 42 U.S.C. §12101(a)(8)

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and/or belief.

RESPECTFULLY SUBMITTED this 19th day of October 2018.

PETER STROJNIK



Plaintiff